

(ii) Make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(3) When the Commission acts under paragraphs (d)(1) or (2) of this section, the administrative time limits prescribed in 5 U.S.C. 552(a)(6) will begin only after the Commission has received payments described in paragraphs (d)(1) and (2) of this section.

(e) *Effect of Debt Collection Act of 1982.* The Commission shall comply with the provisions of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

**§ 9405.12 Waiver or reduction of charges.**

Records responsive to a request will be furnished without charge when the Chief FOIA Officer determines, based on all available information, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

**PART 9407—IMPLEMENTATION OF THE GOVERNMENT IN THE SUNSHINE ACT**

Sec.

- 9407.1 Purpose and scope.
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AUTHORITY: 5 U.S.C. 552b.

SOURCE: 73 FR 54257, Sept. 18, 2008, unless otherwise noted.

**§ 9407.1 Purpose and scope.**

This part contains the regulations of the U.S. Election Assistance Commission implementing the Government in the Sunshine Act (5 U.S.C. 552b). Consistent with the Act, it is the policy of the Commission that the public is entitled to the fullest practicable informa-

tion regarding its decision making processes. This part sets forth the basic responsibilities of the Commission with regard to this policy and offers guidance to members of the public who wish to exercise the rights established by the Act. These regulations also fulfill the requirement of 5 U.S.C. 552b(g) that each agency subject to the Act promulgates regulations to implement the open meeting requirements of paragraphs (b) through (f) of section 552b.

**§ 9407.2 Definitions.**

As used in this part, the term—

*Commission* means the U.S. Election Assistance Commission, established by the Help America Vote Act of 2002, 42 U.S.C. 15301 *et seq.*

*Commissioner* means an individual appointed to the Commission by the President and confirmed by the Senate under section 203 of the Help America Vote Act of 2002, 42 U.S.C. 15323.

*Executive Director* means the Executive Director of the Commission or his or her designee.

*General Counsel* means the General Counsel of the Commission or his or her designee.

*Meeting* means the deliberations of at least three Commissioners where such deliberations determine or result in the joint conduct or disposition of official Commission business. A deliberation conducted through telephone or similar communications equipment in which all persons participating can hear each other shall be considered a meeting. For the purposes of this section, “joint conduct” does not include situations where the requisite number of members is physically present in one place but not conducting agency business as a body. In addition, the term “meeting” does not include a process of notation voting by circulated memorandum for the purpose of expediting consideration of official Commission business. The term “meeting” also does not include deliberations on whether to:

- (1) Schedule a meeting;
- (2) Hold a meeting with less than seven days notice, as provided in § 9407.4(e);
- (3) Change the subject matter of a publicly announced meeting or the determination of the Commission to open or close a meeting or portions of a

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meeting to public observation, as provided in § 9407.4(f);

(4) Change the time or place of an announced meeting, as provided in § 9407.4(g);

(5) Close a meeting or portions of a meeting, as provided in § 9407.5; or

(6) Withhold from disclosure information pertaining to a meeting or portions of a meeting, as provided in § 9407.5.

*Public observation* means attendance by one or more members of the public at a meeting of the Commission but does not include participation in the meeting.

*Public participation* means the presentation or discussion of information, raising of questions, or other manner of involvement in a meeting of the Commission by one or more members of the public in a manner that contributes to the disposition of Commission business.

### § 9407.3 Open meetings.

(a) The Commissioners shall not jointly conduct, determine, or dispose of agency business other than in accordance with this section.

(b) Except as otherwise provided in this part, every portion of every Commission meeting shall be open to public observation.

(c) No additional right to participate in Commission meetings is granted to any person by this part. Meetings of the Commission, or portions of a meeting, shall be open to public participation only when an announcement to that effect is issued under § 9407.4(b)(4). Public participation shall be conducted in an orderly, non-disruptive manner and in accordance with any procedures as the chairperson of the meeting may establish. Public participation may be terminated at any time for any reason.

(d) When holding open meetings, the Commission shall make a diligent effort to provide appropriate space, sufficient visibility, and adequate acoustics to accommodate the public attendance anticipated for the meeting. When open meetings are conducted through telephone or similar communications equipment, the Commission shall make an effort to provide sufficient access to the public in a manner which allows the public to clearly hear, see, or oth-

erwise follow the proceedings. The meeting room or other forum selected shall be sufficient to accommodate a reasonable number of interested members of the public. The Commission shall ensure that public meetings are held at a reasonable time and are readily accessible to individuals with disabilities.

(e) Members of the public attending open Commission meetings may use small electronic audio recording devices to record the proceedings. The use of any other recording equipment and cameras requires advance coordination with and notice to the Commission's Communications Office. The chair or acting chair of the Commission may prohibit, at any time, the use of any recording equipment during a public meeting if he or she determines that such recording would disrupt the orderly conduct of the meeting.

### § 9407.4 Notice of meetings.

(a) Except as otherwise provided in this section, the Commission shall make a public announcement at least seven days prior to a meeting.

(b) The public announcement shall include:

(1) The time and place of the meeting;

(2) The subject matter of the meeting;

(3) Whether the meeting is to be open, closed, or portions of a meeting will be closed;

(4) Whether public participation will be allowed; and

(5) The name and telephone number of the person who will respond to requests for information about the meeting.

(c) The public announcement requirement shall be implemented by:

(1) Publishing the announcement on the Commission's Web site; and

(2) Distributing the announcement to affected government entities and persons and organizations that the Executive Director determines may have an interest in the subject matter of the meeting.

(d) The announcement will be submitted for publication in the FEDERAL REGISTER immediately following the public posting and distribution noted in paragraph (c) of this section.

(e) A meeting may be held with less than seven days notice if a majority of the Commission determines by recorded vote that the business of the Commission so requires. The Commission shall make a public announcement to this effect at the earliest practicable time. The announcement shall include the information required by paragraph (b) of this section and shall be issued in accordance with those procedures set forth in paragraphs (c) and (d) of this section that are practicable given the available period of time.

(f) The subject matter of an announced meeting or the determination of the Commission to open or close a meeting or portions of a meeting to public observation may be changed only if:

(1) A majority of the Commissioners determine by a recorded vote that agency business so requires and that no earlier announcement of the change was possible,

(2) The Commission publicly announces the change and the vote of each Commissioner upon such change at the earliest practicable time.

(3) The announcement of the change noted in paragraph (f)(2) of this section is issued in accordance with those procedures set forth in paragraphs (c) and (d) of this section that are practicable given the available period of time.

(g) The time or place of an announced meeting may be changed only if a public announcement of the change is made at the earliest practicable time. The announcement shall be issued in accordance with those procedures set forth in paragraphs (c) and (d) of this section that are practicable given the available period of time.

**§ 9407.5 Closed meetings.**

(a) A meeting or portions of a meeting may be closed and information pertaining to such meeting or portions of a meeting may be withheld from the public only if the Commission determines that such meeting or portions of a meeting or the disclosure of such information is likely to:

(1) Disclose matters that are:

(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and

(ii) To be properly classified under that Executive Order;

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552) provided that the statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose the trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve either accusing any person of a crime or formally censuring any person;

(6) Disclose information of a personal nature, if disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose either investigatory records compiled for law enforcement purposes or information which, if written, would be contained in such records but only to the extent that the production of the records or information would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to either a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source or sources and, in the case of a record compiled either by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source or sources,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating,

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or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of the Commission. This exception shall not apply in any instance where the Commission has already disclosed to the public the content or nature of the proposed action or where the Commission is required by law to make such disclosure on its own initiative prior to taking final action on the proposal; or

(10) Specifically concern the issuance of a subpoena by the Commission; or the participation of the Commission in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration; or the initiation, conduct, or disposition by the Commission of a particular case of formal adjudication under the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(b) Before a meeting or portions of a meeting may be closed to public observation, the Commission shall determine, notwithstanding the exemptions set forth in paragraph (a) of this section, whether the public interest requires that the meeting or portions of a meeting be open consistent with Federal law. The Commission may open a meeting or portions of a meeting that could be closed under paragraph (a) of this section if the Commission finds it to be in the public interest to do so and the disclosure is not otherwise prohibited by Federal law.

### § 9407.6 Procedures for closing meetings.

(a) A meeting or portions of a meeting may be closed and information pertaining to a meeting or portions of a meeting may be withheld under § 9407.5(a) only when a majority of the members of the Commission vote to take the action.

(b) A separate vote of the Commissioners shall be taken with respect to each meeting or portion of a meeting proposed to be closed and with respect to information which is proposed to be withheld. A single vote may be taken

with respect to a series of meetings or portions of a meeting that are proposed to be closed, so long as each meeting or portion of a meeting in the series involves the same particular matter and is scheduled to be held no more than 30 days after the initial meeting in the series. The vote of each participating Commission member shall be recorded, and no proxies shall be allowed.

(c) A person whose interests may be directly affected by a portion of a meeting may request in writing that the Commission close that portion of the meeting for any of the reasons referred to in § 9407.5(a)(5), (6), or (7). Upon the request of a Commissioner, a recorded vote shall be taken whether to close such meeting or a portion of a meeting.

(d) Before the Commission may hold a meeting that is closed, in whole or part, a certification shall be obtained from the General Counsel that, in his or her opinion, the meeting may properly be closed. The certification shall be in writing and shall state each applicable exemption provision from § 9407.5(a).

(e) Within one day of a vote taken under this section, the Commission shall make publicly available a written copy of such vote reflecting the vote of each Commissioner.

(f) In the case of the closure of a meeting or portions thereof, the Commission shall make publicly available within one day of the vote on such action a full written explanation of the reasons for the closing with a list of all persons expected to attend the meeting and their affiliation.

### § 9407.7 Recordkeeping requirements.

(a) The Commission shall maintain either a complete transcript or electronic recording of the proceedings of each meeting.

(b) In the case of either a meeting or portions of a meeting closed to the public under § 9407.5(a)(8) or (10), the Commission shall maintain a complete transcript, an electronic recording, or a set of minutes of the proceedings. If minutes are maintained, they shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken and the reasons for which such

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actions were taken, including a description of the views expressed on any item and a record reflecting the vote of each Commissioner. All documents considered in connection with any action shall be identified in the minutes.

(c) The transcript, electronic recording, or copy of the minutes of a meeting shall disclose the identity of each speaker.

(d) The Commission shall maintain a complete verbatim copy of the transcript, a complete electronic recording, or a complete copy of the minutes of the proceedings of each meeting for at least two years, or for one year after the conclusion of any Commission proceeding with respect to which the meeting was held, whichever occurs later.

### § 9407.8 Public availability of records.

The Commission shall make available to the public the transcript, electronic recording, or minutes of a meeting, except for items of discussion or testimony that relate to matters the Commission has determined to contain information that may be withheld under § 9407.5(a). This information shall be made available as soon as practicable after each meeting on the Commission's Web site. Otherwise, requests to receive or review transcripts, electronic recordings, or minutes of a meeting should be addressed to the Communications Director, U.S. Election Assistance Commission, 1225 New York Avenue, Suite 1100, Washington, DC 20005. Copies of a transcript, a transcription of the electronic recording, or the minutes of a meeting (except for items of discussion or testimony that relate to matters withheld under § 9407.5) shall be furnished at cost to any person upon written request pursuant to the requirements of 11 CFR part 9405.

## PART 9409—TESTIMONY BY COMMISSION EMPLOYEES RELATING TO OFFICIAL INFORMATION AND PRODUCTION OF OFFICIAL RECORDS IN LEGAL PROCEEDINGS

Sec.

9409.1 Purpose and scope.

9409.2 Applicability.

## 11 CFR Ch. II (1–1–09 Edition)

9409.3 Definitions.

9409.4 Production or disclosure prohibited unless approved by appropriate Commission official.

9409.5 Procedures for demand for testimony or production of documents.

9409.6 Service of subpoenas or requests.

9409.7 Factors to be considered by the General Counsel.

9409.8 Processing demands or requests.

9409.9 Final determination.

9409.10 Restrictions that apply to testimony.

9409.11 Restrictions that apply to released records.

9409.12 Procedure when a decision is not made prior to the time a response is required.

9409.13 Procedures when the General Counsel directs an employee not to testify or provide documents.

9409.14 Fees.

9409.15 Penalties.

AUTHORITY: 44 U.S.C. 3102.

SOURCE: 73 FR 54271, Sept. 18, 2008, unless otherwise noted.

### § 9409.1 Purpose and scope.

(a) This part sets forth policies and procedures you must follow when you submit a demand or request to an employee of the United States Election Assistance Commission to produce official records and information, or provide testimony relating to official information, in connection with a legal proceeding. You must comply with these requirements when you request the release or disclosure of official records and information.

(b) The Commission intends these provisions to:

(1) Promote economy and efficiency in its programs and operations;

(2) Minimize the possibility of involving the Commission in controversial issues not related to its functions;

(3) Maintain the Commission's impartiality among private litigants where the Commission is not a named party; and

(4) Protect sensitive, confidential information and the deliberative processes of the Commission.

(c) In providing for these requirements, the Commission does not waive the sovereign immunity of the United States.